

**Before the
Federal Communications Commission
Washington D.C. 20554**

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In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	WC Docket No. 09-197
Virgin Mobile USA, L.P.)	
)	
Public Comment for Limited Designation)	
as an Eligible Telecommunications Carrier)	
in the States of Alabama, Connecticut,)	
Delaware, New Hampshire, and the)	
District of Columbia)	
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Supplemental Information Submitted by Advocates for Universal Access, LLC

Advocates for Universal Access, LLC (“AUA”) respectfully requests the opportunity to present supplemental information and/or comments concerning the above titled application for Eligible Telecommunication Carrier (“ETC”) designation status by Virgin Mobile USA, L.P. (“Virgin Mobile”) in the states of Alabama¹, Connecticut, New Hampshire, Delaware and the District of Columbia (FCC Docket 09-197, Public Notice No. DA 10-345).²

Virgin Mobile’s Comments Do Not Address Key Concerns

In its reply filing of April 15, 2010, Virgin Mobile stated that “(N)one of the limited comments filed in response to the Commission’s *Public Notice* raised any issues that Virgin Mobile has not thoroughly addressed in its prior filings in this proceeding...”. However, this is plainly wrong, as Virgin Mobile has not answered *any* of the questions submitted by AUA. Of critical importance, Virgin Mobile has neither explained how its corporate structure fits within the legal definition of a “facilities-based carrier” (which it even failed to define in its petition),

¹ Public Notice DA 10-345 references the Virgin Mobile filings for Connecticut, Delaware, New Hampshire and the District of Columbia. Additionally, Virgin Mobile’s presentation to the FCC on March 22, 2010, made part of the public docket, requests inclusion of Alabama for expedited PSAP approval. The comments herein are relevant to Virgin Mobile’s request for Alabama, and we request consideration of these comments for that ETC designation request as well.

² This filing is intended to supplement our prior comments submitted March 29, 2010.

nor has Virgin Mobile explained how its corporate structure alleviates the safety concerns of the FCC, which were addressed in the initial Forbearance Order Conditions agreed to by Virgin Mobile. In particular, Virgin Mobile has not explained any real-world reasons why it should not be required to seek PSAP certifications of 9-1-1 and E-9-1-1 compliance. Said another way, just because Virgin Mobile has been acquired by a “facilities based carrier” does not mean that it is a facilities based carrier, particularly since it has maintained its own, legally separate, corporate form.

While Virgin Mobile claims that its acquisition by Sprint-Nextel somehow transformed the company into a “facilities-based carrier”, it has submitted no evidence that Virgin Mobile owns any facilities, or possesses any FCC facilities or spectrum licenses.³ Moreover, Virgin Mobile is not an integrated brand or division of Sprint-Nextel. Instead, Virgin Mobile, L.P. is an independent corporate entity registered in Delaware.⁴

Thus, it would seem that Virgin Mobile remains a Mobile Virtual Network Operator that is simply owned by Sprint-Nextel and could be sold or divested at any time. Virgin Mobile’s filings indicate that Sprint-Nextel has always held an ownership interest in Virgin-Mobile. In fact, the company has stated that it was founded as a Joint Venture between Virgin and Sprint-Nextel. Sprint-Nextel thus owned a large portion of Virgin Mobile at the time the Forbearance conditions were imposed, and it was acknowledged at that time that Virgin Mobile was not a “facilities-based carrier”.

In our prior filing, we simply asked that Virgin Mobile be required to explain what has changed since November to warrant its requested classification change, and to explain what of substance has happened to make Virgin Mobile customers safer, so as justify removal of the Forbearance conditions. Virgin Mobile continues to evade these questions, hiding behind general assertions that are not backed by either substantive legal analysis or practical application. By comparison, in calls with investors, Sprint-Nextel is more forthcoming about its stake in Virgin Mobile and has stated as recently as two days ago, on April 28, 2010, that the integration

³ The term facilities-based carrier means an “entity that owns communications transmission facilities is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934.” See: e.g. 18 USC 1829. **Virgin Mobile has not explained how it meets any of these elements.**

⁴ See: Delaware Corporate Registration of Virgin Mobile LP, Attached.

of Virgin Mobile is *ongoing*.⁵ Interestingly, in that article, Dan Schulman, the head of Sprint's prepaid business, said the integration of Virgin Mobile USA is "proceeding better than expected" and that Sprint had cut one-third of the workforce of its "combined Boost Mobile and Virgin Mobile operations". Interestingly, Boost Mobile is, and always has been considered to be an MVNO, not a "facilities-based carrier". Thus, Sprint-Nextel's own public statements seem to contradict its filings before the FCC and its assertion that Virgin Mobile is a "facilities-based carrier".⁶

At this time, it is apparent that a customer of Virgin Mobile is still not a customer of Sprint-Nextel. Sprint-Nextel has submitted no evidence that its customers are integrated; in fact, it is not clear whether state privacy laws and communications regulations would permit the sharing of consumer information between Sprint-Nextel and Virgin Mobile which are separate entities. This situation continues to pose challenges for 9-1-1 access, which were addressed in the Forbearance Conditions. Namely, if a Virgin Mobile customer calls 9-1-1, the ANI/ALI display does not identify the caller as a Virgin Mobile customer, because Virgin Mobile is a virtual operator and does not own its own facilities. Instead, the caller would appear to be a Sprint-Nextel customer. In gathering caller information, a 9-1-1 Center must connect first to Sprint-Nextel, the facility owner, and is then referred to an exigent circumstances hotline for Virgin Mobile, the virtual network operator. Given the importance of Lifeline, and the potential for error in this extra step, it is important that 9-1-1 Centers (PSAPs) be given an opportunity to certify that Virgin Mobile is 9-1-1 and E-9-1-1 compliant. This is particularly so given that free Lifeline program phones are often older and less advanced models (without GPS chips), that may or may not be E-9-1-1 compliant. E-9-1-1 compliance is another crucial element of the PSAP certification requirement.

The FCC has reasonably imposed a 90-day certification window to encourage expedited certifications. The FCC should err on the side of public safety without further explanation of Virgin Mobile addressing with specificity the safety concerns that led to the Forbearance Order in the first place. A simple 90-day certification is a small price to pay to ensure public safety. We thus re-assert our prior questions and ask that the FCC order Virgin Mobile to explain with

⁵ See: Sprint narrows subscriber gap in Q1, but loss widens, Phil Goldstein, Fierce Wireless, April 28, 2010, attached.

⁶ See: Sprint Nextel buys Virgin Mobile USA MVNO, James Middleton, Telecoms.com, July 29, 2009, attached.

specificity how it meets the legal definition of a “facilities-based carrier” and provide evidence that the concerns underlying the Forbearance Order conditions have been mitigated.

Respectfully Submitted this 30th day of April, 2010, by:



Sheila Stickel, President & Executive Director

Advocates for Universal Access, LLC

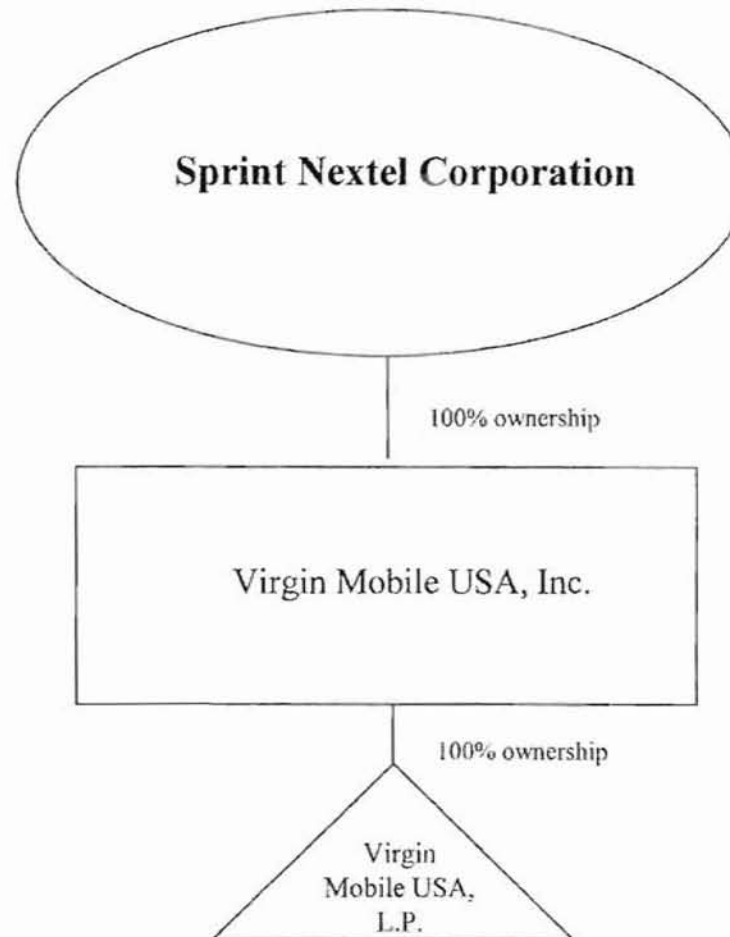
P.O. Box 21914

Seattle, WA 98111

(206) 282-5544

Exhibit 1:

Corporate Information



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Entity Details**THIS IS NOT A STATEMENT OF GOOD STANDING**

File Number: 4333571 **Incorporation Date / Formation Date:** 04/11/2007 (mm/dd/yyyy)

Entity Name: VIRGIN MOBILE USA, INC.

Entity Kind: CORPORATION **Entity Type:** GENERAL

Residency: DOMESTIC **State:** DE

REGISTERED AGENT INFORMATION

Name: CORPORATION SERVICE COMPANY

Address: 2711 CENTERVILLE ROAD SUITE 400

City: WILMINGTON **County:** NEW CASTLE

State: DE **Postal Code:** 19808

Phone: (302)636-5401

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Entity Details

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File Number:	3442933	Incorporation Date / Formation Date:	10/04/2001 (mm/dd/yyyy)
Entity Name:	VIRGIN MOBILE USA, L.P.		
Entity Kind:	LIMITED LIABILITY COMPANY (LLC)	Entity Type:	GENERAL
Residency:	DOMESTIC	State:	DE

REGISTERED AGENT INFORMATION

Name:	CORPORATION SERVICE COMPANY		
Address:	2711 CENTERVILLE ROAD SUITE 400		
City:	WILMINGTON	County:	NEW CASTLE
State:	DE	Postal Code:	19808
Phone:	(302)636-5401		

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Exhibit 2

Cited Articles



April 30, 2010



Sprint buys out Virgin's US MVNO business

July 29, 2009 Written by [James Middleton](#)

US mobile virtual network operator Virgin Mobile USA is to be acquired by hosting partner Sprint Nextel for around \$483m.

Virgin Mobile USA piggybacks on the Sprint network, targeting the US prepaid consumer sector, and has amassed more than five million customers.

Sprint said the addition of the Virgin Mobile brand complements **its own Boost Mobile MVNO business**, which is also focused on the prepaid market. Boost had over three million subscribers as of June 30, and the company said that both brands will continue to exist, serving existing and prospective customers.



Sprint buys out Virgin's US MVNO business

Under the deal Sprint, which already owns 13.1 per cent of Virgin Mobile USA, will buy out Virgin's own 28.3 per cent stake, SK Telecom's 15.3 per cent and the publicly held 43.3 per cent stake. In addition, Sprint will retire all of Virgin Mobile USA's outstanding debt, which is expected to be no more than \$205m on September 30, 2009.

Virgin will continue to license the Virgin brand from to Sprint for \$12.7m through to the end of 2021.

Sprint's prepaid business will now be led by Dan Schulman, currently Virgin Mobile USA's chief executive officer, who will report directly to Dan Hesse, Sprint Nextel president and chief executive officer. Matt Carter will continue to lead Boost Mobile and will report to Schulman.

Tags; [MVNO](#), [Sprint](#), [US](#), [Virgin](#), [Americas](#), [Networks](#), [News & Analysis](#), [Operator](#)



Published on FierceWireless (<http://www.fiercewireless.com>)

Sprint narrows subscriber gap in Q1, but loss widens

By Phil Goldstein

Created Apr 28 2010 - 8:44am

Sprint Nextel ([NYSE: S](#) [1]) continued to lose wireless subscribers in the first quarter and reported a wider net loss, but the company made progress toward overall subscriber growth. The nation's No. 3 carrier noted that it had its best year-over-year postpaid subscriber results in five years.

"I never said Sprint's turnaround would be quick or would be easy," Sprint CEO Dan Hesse said, noting the company has been gathering momentum since he took the reins in late 2007.

Sprint's stock fell 2.2 percent to \$4 per share in pre-market trading.

Here's a breakdown of some of Sprint's key metrics:

Subscribers: Sprint lost a total of 75,000 net wireless subscribers in the quarter, compared with a net subscriber loss of 182,00 in the year-ago quarter. Still, the carrier continued to bleed postpaid subscribers, losing 578,000 in the quarter. However, that was 670,00 fewer postpaid subscriber than it lost in the first quarter of 2009. The carrier's postpaid losses were offset by 348,000 net prepaid customer additions. Sprint also added 155,000 wholesale and affiliate subscribers as a result of renewed subscriber growth in its MVNO business. The company had a total subscriber base of 48.1 million at the end of the quarter.

In an interview with *FierceWireless*, Hesse said postpaid growth will slow, and that the drops in postpaid additions at AT&T Mobility ([NYSE: T](#)) [2] and Verizon Wireless ([NYSE: VZ](#)) [3] were due to both the improvements Sprint has made and the increasing popularity of prepaid. Nonetheless, Hesse said Sprint will continue to work to get back to postpaid growth, first on its CDMA network. "The iDEN piece has been the lion's share of the postpaid subscriber losses for some time," he said. "You have to take the two separately. There's no question it makes it harder."

Financials: Sprint's total revenue was \$8.09 billion, down 1.5 percent from \$8.2 billion in the year-ago period. Sprint's wireless service revenues clocked in at \$6.4 billion for the quarter, up by less than 1 percent from the year-ago quarter and up around 3 percent compared with the fourth quarter of 2009. The company said the increases were due primarily to its acquisition of Virgin Mobile and the success of its Boost Mobile monthly unlimited plan.

ARPU: Wireless postpaid average revenue per user was around \$55 for the quarter, down year-over-year from \$56, but flat sequentially. Prepaid ARPU came in at \$27, compared with \$31 in the year-ago period and in the fourth quarter of 2009. Sprint said the declines were due to the inclusion of Virgin Mobile and Assurance Wireless customers who have lower ARPU on average than those of Boost Mobile customers.

Churn: Postpaid churn in the quarter was 2.15 percent, down from 2.25 percent in the year-ago period and up from 2.11 percent in the fourth quarter of 2009. Postpaid churn, excluding the effect of deactivations of Helio customers, was 2.12 percent, Sprint said. Prepaid churn was 5.74 percent, compared with 6.86 percent in the year-ago period and 5.56 percent in the fourth quarter of 2009.

Clearwire/4G: During the company's call with analysts, Hesse talked up both the Overdrive 4G mobile hotspot and the company's forthcoming smartphone, the HTC Evo, which will run on Clearwire's ([NASDAQ: CLWR](#) [4]) mobile WiMAX network. Hesse told *FierceWireless* that Sprint will launch more 3G/4G phones this year as well. He said the company is not currently disclosing how many 4G customers it is signing up. However, he noted that because of Sprint's majority stake in Clearwire and the nature of its contract, it has a "founder's preference discount" that gives it a wholesale pricing advantage over other carriers and MSOs, such as Comcast and Time Warner Cable, that are also Clearwire wholesale partners. Interestingly, Hesse described prepaid mobile WiMAX service as a "possibility," but said no decisions have been made.

Hesse also said Sprint is considering tiered data pricing. "We'll announce any changes to pricing when we're ready to do that," he said. "But it's clearly something worth thinking about and analyzing."

Prepaid: Sprint said in the next few weeks it will launch and implement its multi-brand prepaid strategy. Dan Schulman, the head of Sprint's prepaid business, said the integration of Virgin Mobile USA is proceeding better than expected, and that Sprint had cut one-third of the workforce of its combined Boost Mobile and Virgin Mobile operations. He said Sprint will re-launch the Virgin brand in May as well as another brand focused on pay-as-you-go subscribers. "We think the multi-brand strategy allows us to go after more of the prepaid market opportunity," Hesse told *FierceWireless*. "And as Dan indicated, rather than having one brand and one blunt instrument where you have to continue to focus on price, it allows you to create unique value propositions for different segments of the market."

iDEN: Hesse said Sprint remains committed to its iDEN network, but that it is continually looking at technologies as the market evolves. "We will continually look at what's the best utilization of our spectrum assets and what are the best technologies available to provide the applications that our customers want," he said. "We're thinking long term in terms of an evolution plan." He emphasized that no decisions have been made, and also pointed to a number of recent iDEN device launches, including the Android-powered Motorola i1.

For more:

- see this *FierceWireless* Q1 [earnings page](#) [5]
- see this [release](#) [6]

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